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# In the Supreme Court of the United States

EUGENE WRINN, JR.,

*Petitioner,*

v.

DAREN JOHNSON, G.K. MANLEY, AND K.J. KOVERMAN,

*Respondents.*

*ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

RICHARD CORDRAY
Attorney General of Ohio

BENJAMIN C. MIZER*
Solicitor General
**Counsel of Record*
ELISABETH A. LONG
Deputy Solicitor
30 E. Broad St., 17th Floor
Columbus, Ohio 43215
614-466-8980
benjamin.mizer@
ohioattorneygeneral.gov

Counsel for Respondents

## QUESTION PRESENTED

Is the waiver provision of the Ohio Court of Claims Act—which offers plaintiffs the choice of either pursuing a claim against the State of Ohio in the Ohio Court of Claims or pursuing related claims in other courts, but does not effectively bar plaintiffs from pursuing federal claims—consistent with the Supremacy Clause of the United States Constitution, art. VI, cl. 2?

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## INTRODUCTION

The Ohio Court of Claims Act ("OCCA") provides that a plaintiff who files a civil action in the Ohio Court of Claims waives any other cause of action against a state officer or employee that is based on the same conduct. Ohio Rev. Code § 2743.02(A)(1). A plaintiff therefore may choose either to seek money damages against the State in the Ohio Court of Claims or to pursue other claims, such as a federal action under 42 U.S.C. § 1983, in other courts. Because Ohio voluntarily waives its immunity in exchange for the plaintiff's voluntary waiver of other claims, the OCCA strikes a fair bargain that passes constitutional muster. And because the OCCA does not create immunity from federal liability, the waiver provision is consistent with the Supremacy Clause of the United States Constitution, U.S. Const., art. VI, cl. 2.

Petitioner Eugene Wrinn instituted a federal action against three Ohio State Highway Patrolmen, then filed a related action in the Ohio Court of Claims. Applying the OCCA waiver provision, the federal district court dismissed Wrinn's federal claims and the Sixth Circuit Court of Appeals affirmed. Wrinn now asks this Court to review that decision, arguing that the OCCA violates the Supremacy Clause by creating a state-law defense to federal civil rights claims. But as the Sixth Circuit has repeatedly held, the OCCA does no such thing. The OCCA allows plaintiffs to pursue federal civil rights claims, but provides that such claims are waived if a plaintiff chooses instead to pursue the State's deep pockets in the Ohio Court of Claims.

Alternatively, Wrinn asks the Court to grant certiorari, vacate the Sixth Circuit's decision, and

remand for reconsideration in light of *Haywood v. Drown*, 129 S. Ct. 2108 (2009), which the Court decided shortly after the Sixth Circuit issued its decision below. But there is no reason for the Sixth Circuit to reconsider its decision because, unlike the OCCA waiver provision, the statute at issue in *Haywood* effectively deprived plaintiffs of a federal remedy.

In spite of Wrinn's best efforts to portray a novel question of constitutional law, to manufacture a circuit split, and to raise nonexistent federalism concerns, his petition for certiorari fails to articulate a legal issue meriting this Court's attention. For these reasons, the Court should deny Wrinn's petition.

## COUNTERSTATEMENT

### A. Wrinn filed simultaneous actions in federal and state court.

Wrinn sued Respondents Daren Johnson, G.K. Manley, and K.J. Koverman ("Patrolmen") and other defendants in federal district court on September 11, 2006. According to Wrinn's federal complaint, the Patrolmen and other officials injured Wrinn when they used excessive force in striking and handcuffing him following a traffic accident that occurred near Lima, Ohio, roughly one year earlier. App. 77a-83a. Wrinn stated eight claims—six under 42 U.S.C. § 1983 and two under Ohio law. App. 81a-89a.

Two days later, Wrinn filed a separate action in the Ohio Court of Claims. The state court complaint named three defendants—the State of Ohio and two of the Patrolmen—and stated four claims under Ohio law. App. 93a, 97a-99a. The Ohio Court of Claims

promptly dismissed the Patrolmen as defendants on the ground that "only state agencies and instrumentalities can be defendants in original actions in the Court of Claims." *Wrinn v. Ohio State Highway Patrol*, Case No. 2006-05934, Pre-Screening Entry (Sept. 15, 2006) (citing Ohio Rev. Code § 2743.02(E)). Then, finding that Wrinn's federal court action "may be partially or wholly dispositive of" the state court action, the court stayed the state court action pending resolution of the federal court dispute. *Wrinn v. Ohio State Highway Patrol*, Case No. 2006-05934, Entry Staying Proceedings (Dec. 5, 2006).

### B. The district court dismissed the Patrolmen as defendants.

Meanwhile, in federal court, the Patrolmen moved to dismiss Wrinn's federal complaint under Fed. R. Civ. P. 12(b)(6). The Patrolmen argued, among other things, that the OCCA, Ohio Rev. Code § 2743.02(A)(1), required dismissal.

The OCCA created the Ohio Court of Claims and waived the State's immunity from liability, thus allowing suits against the State in that court. The OCCA includes a waiver provision, which provides: "Except in the case of a civil action filed by the state, filing a civil action in the court of claims results in a complete waiver of any cause of action, based on the same act or omission, which the filing party has against any officer or employee . . . ." *Id.* The Patrolmen asserted that, under this law, Wrinn waived his right to bring a § 1983 action in federal court when he availed himself of the jurisdiction of the Ohio Court of Claims. See App. 27a.

The district court granted the Patrolmen's motion to dismiss, App. 34a, following the Sixth Circuit's earlier holdings interpreting "the O.C.C.A. language as requiring a complete waiver of all claims, including federal claims, upon the filing of a similar complaint in the Ohio Court of Claims," App. 33a (citing *Leaman v. Ohio Dep't of Mental Retardation & Developmental Disabilities*, 825 F.2d 946 (6th Cir. 1987) (en banc), *cert. denied*, 487 U.S. 1204 (1988); *Turker v. Ohio Dep't of Rehab. & Corrs.*, 157 F.3d 453 (6th Cir. 1998)). The court later certified that its dismissal order was final, and therefore immediately appealable, under Fed. R. Civ. P. 54(b). App. 41a-42a.

### C. The Sixth Circuit affirmed the dismissal of Wrinn's § 1983 claim, and declined rehearing en banc.

On appeal, the Sixth Circuit attempted to clarify the scope of the OCCA's waiver provision by certifying a question to the Ohio Supreme Court. App. 9a-10a. But the Ohio Supreme Court dismissed the certified proceeding for lack of prosecution, App. 45a, when Wrinn failed to comply with the court's rules of practice, see App. 6a. Acting without guidance from the Ohio Supreme Court, the Sixth Circuit applied *Leaman*, 825 F.2d 946, and *Thomson v. Harmony*, 65 F.3d 1314 (6th Cir. 1995), *cert. denied*, 517 U.S. 1105 (1996), which "hold that a plaintiff waives all claims he may have against state officers, including federal claims, when he brings suit in the Court of Claims based on the same acts or omissions." App. 7a (internal quotation and citations omitted). The Sixth Circuit affirmed the dismissal of

Wrinn's § 1983 claims as barred by the OCCA's waiver provision. *Id.*

Wrinn petitioned for rehearing en banc and the Sixth Circuit denied the petition, "conclud[ing] that the issues raised in the petition were fully considered upon the original submission and decision of the case." App. 37a.

## REASONS FOR DENYING THE WRIT

Wrinn's claim that the OCCA waiver provision violates the Supremacy Clause is not worthy of this Court's review. The waiver provision does not violate the Supremacy Clause because it does not deprive plaintiffs of any federal remedy or grant state actors immunity for conduct that otherwise violates federal law. Instead, the OCCA opens otherwise unavailable state coffers to plaintiffs who choose not to pursue related actions in other courts.

The Sixth Circuit's decision is consistent with this Court's Supremacy Clause jurisprudence, including *Haywood*, 129 S. Ct. 2108. Although *Haywood* was decided after the Sixth Circuit resolved this case, its holding is limited to statutes that effectively immunize defendants from a federal action—which the OCCA waiver provision does not. Thus, there is no need for the Sixth Circuit to reconsider its decision in light of *Haywood*.

In urging the Court to grant certiorari, Wrinn attempts to manufacture a circuit split, and further invokes the principles of federalism and comity as grounds for review. But Wrinn does not identify any real conflict among the lower courts. Instead, he cites a handful of federal appeals court decisions explaining that, under the Supremacy Clause,

federal law preempts any state law that immunizes government conduct otherwise subject to suit under § 1983. Wrinn's efforts to invoke the principles of federalism and comity also fail because, contrary to Wrinn's assertions, the Sixth Circuit's interpretation of the OCCA is readily squared with the Ohio Supreme Court's interpretation of the statute.

The OCCA waiver provision is constitutional, and the dismissal of Wrinn's federal claims against the Patrolmen was proper. Wrinn offers no persuasive reason why the Court should grant certiorari.

### A. The Sixth Circuit properly held that the OCCA is consistent with the Supremacy Clause, and *Haywood* has no bearing on that conclusion.

Wrinn urges this Court to grant certiorari, vacate, and remand to ensure that the Sixth Circuit "fully examine[s]" the case "under this Court's Supremacy-Clause precedents, including the standards set forth in *Haywood*."[1] Pet. at 9. But the Sixth Circuit's decision is entirely consistent with the Court's Supremacy Clause jurisprudence, including the Court's 2009 decision in *Haywood*.

#### 1. The OCCA waiver provision does not violate the Supremacy Clause.

Wrinn mistakenly asserts that the OCCA waiver provision violates the Supremacy Clause.

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[1] Wrinn's claim that "the Sixth Circuit declined to even address [his] Supremacy-Clause argument," Petition for Certiorari ("Pet.") at 9, is patently false. The Sixth Circuit explained that its holdings in *Leaman* and *Thomson* dictated the outcome of Wrinn's Supremacy Clause challenge, thereby incorporating the Supremacy Clause analysis from those decisions. App. 6a-7a.

Pet. at 10-12. The Supremacy Clause prohibits states from extinguishing a federal right by statute. U.S. Constitution, art. VI, cl. 2. But the OCCA waiver provision does not deprive plaintiffs of any federal remedy. Instead, as the Sixth Circuit has explained, the waiver provision offers plaintiffs a choice: They may seek to recover either from the State's coffers (in the Court of Claims) or from the individual state officers (in the court of common pleas or federal court), but not from both. *Leaman*, 825 F.2d at 953-54. Either way, this statutory *quid pro quo* is consistent with the Constitution. *Id.* at 955.

A state does not run afoul of the Supremacy Clause by inviting litigants to waive their federal rights as a condition of receiving a benefit. In *Town of Newton v. Rumery*, 480 U.S. 386 (1987), for example, the defendant town agreed to drop criminal charges against the plaintiff if he promised not to bring a wrongful-arrest claim against the town or its officials. *Id.* at 390. This court held that such a "release-dismissal agreement" is enforceable if (1) it is voluntary, (2) there is no evidence of prosecutorial misconduct, and (3) it would not adversely affect the public interest. *Id.* at 398.

Ohio Rev. Code § 2743.02(A)(1) provides, in pertinent part:

> Except in the case of a civil action filed by the state, filing a civil action in the court of claims results in a complete waiver of any cause of action, based on the same act or omission, which the filing party has against any officer or employee, as defined in section 109.36 of the Revised Code. The

> waiver shall be void if the court determines that the act or omission was manifestly outside the scope of the officer's or employee's office or employment or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

Under this statute, a plaintiff may choose either to pursue a claim for money damages against Ohio in the Ohio Court of Claims or pursue other claims, like a § 1983 action, in other courts. As the Sixth Circuit has repeatedly recognized, this exchange—the State's voluntary waiver of immunity for the plaintiff's voluntary waiver of other claims—represents a fair bargain and passes constitutional muster. See, e.g., *Leaman*, 825 F.2d at 954; *Plinton v. County of Summit*, 540 F.3d 459, 462-63 (6th Cir. 2008) (applying *Leaman*, 825 F.2d 946); *Thomson*, 65 F.3d at 1319 (same).

The Sixth Circuit came to this conclusion, in part, because there are only two circumstances in which an individual may sue a State: Congress may authorize a suit to enforce the Fourteenth Amendment, *Fitzpatrick v. Bitzer*, 427 U.S. 445, 446 (1976), or a State may voluntarily waive its sovereign immunity, *Clark v. Barnard*, 108 U.S. 436, 447-48 (1883). Excepting these two situations, States enjoy sovereign immunity. Because "Ohio was under no constitutional duty to let itself be sued at all, . . . it was not unreasonable for the state to tell prospective plaintiffs—in words not unlike those used by the United States itself in the Federal Tort Claims Act—'we will agree to let you sue the sovereign if you will agree to surrender your claims

against the sovereign's servants.'" *Leaman*, 825 F.2d at 954.

There is "nothing inconsistent with § 1983 in the offer the state has made in its Court of Claims Act. The Ohio statute gives claimants an option not otherwise available to them, and any claimant who does not like the statutory option is perfectly free to reject it and prosecute a § 1983 action against the state's officials just as if the Court of Claims Act had never been passed." *Leaman*, 825 F.2d at 953. For these reasons, the OCCA waiver provision does not violate the Supremacy Clause.

**2. *Haywood* does not call into question the constitutionality of the OCCA waiver provision.**

*Haywood* in no way alters the constitutional analysis of the OCCA waiver provision. In *Haywood*, the Court held that a New York law that prohibits state courts from hearing civil rights claims against corrections personnel violates the Supremacy Clause. *Haywood*, 129 S. Ct. at 2118. Unlike the New York law at issue in *Haywood*, however, the OCCA does not effectively immunize state officials from federal claims, for the reasons explained above. Therefore, *Haywood* has no bearing on the outcome of Wrinn's Supremacy Clause challenge.

At issue in *Haywood* was New York Correction Law § 24, which provides that no action may be brought in any state court against any officer or employee of New York's Department of Correctional Services for acts done in the discharge of their duties, and that any claim arising from such acts may be pursued only as a claim against the state in

the New York Court of Claims. As a jurisdictional law, it closed New York's courts to federal civil rights claims against corrections officers. *Id.* at 2112. It did not, however, shield other state employees, such as police.

In striking down the law, the Court held that States do not have authority to nullify a federal right or cause of action. The Court observed that federal law is as much the law of the States as the laws passed by their own legislatures, and that § 1983 claims are therefore part of each State's law. *Id.* at 2114. The Court also reiterated that states can neither immunize a defendant against nor create a defense or procedural bar to a federal claim. *Id.* at 2115. In light of these principles, the Court held that under the Supremacy Clause, "having made the decision to create courts of general jurisdiction that regularly sit to entertain analogous suits, New York is not at liberty to shut the courthouse door to federal claims that it considers at odds with its local policy." *Id.* at 2117.

The *Haywood* Court made clear that its holding was limited to laws that are effectively complete grants of immunity: "Our holding addresses only the unique scheme adopted by the State of New York—a law designed to shield a particular class of defendants (correction officers) from a particular type of liability (damages) brought by a particular class of plaintiffs (prisoners)." *Id.* at 2118.

Unlike New York's law, the OCCA does not create an absolute barrier against civil rights liability. See Ohio Rev. Code § 2743.02(A)(1). Wrinn *could have* filed his claim in federal court if he had forgone the separate state court action. The waiver

provision provides that a plaintiff may choose either to pursue a claim for money damages against Ohio in the Ohio Court of Claims or to pursue other claims, like a § 1983 action, in another court. *Leaman*, 825 F.2d at 953. As the Sixth Circuit has held, this exchange—the State's voluntary waiver of immunity for the plaintiff's voluntary waiver of his other claims—represents a fair bargain and passes constitutional muster. *Id.* at 954-55.

Because the OCCA does not foreclose civil rights claims entirely, but simply gives plaintiffs the option to bargain away one type of claim in exchange for another, Ohio's statute does not run afoul of *Haywood*'s limited holding. Thus, there is no need for the Sixth Circuit to reconsider its decision in light of *Haywood*.

**B. The Sixth Circuit's decision does not conflict with other lower court decisions.**

Wrinn argues that the decision below "conflicts with other circuit court decisions holding that state-created immunities and defenses cannot apply to bar federal claims," Pet. at 13, but this asserted conflict is nonexistent.

The Supremacy Clause prohibits States from enacting immunity statutes that bar § 1983 claims. Accordingly, "[c]onduct by persons acting under color of state law which is wrongful under 42 U.S.C. § 1983 . . . cannot be immunized by state law." *Martinez v. California*, 444 U.S. 277, 284 n.8 (1980); see *Felder v. Casey*, 487 U.S. 131, 139 (1988) ("[A] state law that immunizes government conduct otherwise subject to suit under § 1983 is preempted."). Each of the five supposed conflict

cases cited by Wrinn says as much—and little more. See *Swipies v. Kofka*, 419 F.3d 709, 716 (8th Cir. 2005) (state cannot enact a good-faith defense to § 1983 liability); *Kimes v. Stone*, 84 F.3d 1121, 1127 (9th Cir. 1996) (conduct that violates § 1983 "cannot be immunized by state law"); *Palmer v. City of Monticello*, 31 F.3d 1499, 1504 (10th Cir. 1994) (same); *Davis v. Little*, 851 F.2d 605, 610-11 (2d Cir. 1988) ("[A] state rule of immunity or privilege which allows a state officer to escape liability. . . is simply not controlling under 42 U.S.C. § 1983." (internal quotation and citation omitted)); *Wade v. City of Pittsburgh*, 765 F.2d 405, 407 (3d Cir. 1985) ("The supremacy clause of the Constitution prevents a state from immunizing entities or individuals alleged to have violated federal law.").

None of the five cases cited by Wrinn is in conflict with the Sixth Circuit's decision. The Sixth Circuit agrees that federal law preempts any State law that immunizes government conduct otherwise subject to suit under § 1983. But the Sixth Circuit rejected Wrinn's Supremacy Clause challenge because it properly concluded, for the reasons explained above, that the OCCA does not immunize state officials from liability for conduct that would be actionable under § 1983. See App. 7a (citing *Leaman*, 825 F.2d 946, and *Thomson*, 65 F.3d 1314).

### C. The Sixth Circuit's decision is consistent with the Ohio Supreme Court's interpretation of the OCCA.

Wrinn contends that "the Sixth Circuit has violated the comity that federal courts owe to state-court interpretations of state statutes, a deference that is fundamental to federalism," Pet. at 14, but

Wrinn's concern is easily dispelled: The Sixth Circuit's and Ohio Supreme Court's interpretations of the OCCA are consistent. See *Thomson*, 65 F.3d at 1319 (analyzing *Leaman*, 825 F.2d 946, in light of *Conley v. Shearer*, 595 N.E.2d 862 (Ohio 1992)). Contrary to Wrinn's assertions, the waiver provisions of the OCCA unambiguously apply to federal claims, and the Ohio Supreme Court has not said otherwise.

The OCCA provides that "filing a civil action in the court of claims results in a complete waiver of *any* cause of action, based on the same act or omission, which the filing party has against any officer or employee." Ohio Rev. Code § 2743.02(A)(1) (emphasis added). "The word 'any,' as used in the statute, is unambiguous," *Leaman*, 825 F.2d at 952, and it includes federal claims like Wrinn's. "In providing that an election to sue the state in the Court of Claims results in a complete waiver of any cognate cause of action against individual state officers or employees, the Ohio legislature clearly provided for waiver of federal causes of action, as well as causes of action based upon state law." *Id.* A plaintiff can therefore waive a federal § 1983 claim by filing a complaint in the Ohio Court of Claims.

This interpretation of the OCCA, as articulated by the Sixth Circuit's en banc opinion in *Leaman*, 825 F.2d 946, is consistent with the Ohio Supreme Court's subsequent decision in *Conley*, 595 N.E.2d 862, because these cases interpreted two different provisions of Ohio law. See *Thomson*, 65 F.3d at 1319. *Leaman* considered the OCCA waiver provision, Ohio Rev. Code § 2743.02(A)(1), while *Conley* considered a different subpart of the OCCA:

Ohio Rev. Code § 2743.02(F).[2] Subsection (F) sets forth the procedure for plaintiffs suing individual state officials. Specifically, it requires a plaintiff who has a potential claim against the State arising out of a state official's conduct to first ask the Court of Claims—rather than the court of common pleas—to determine whether the defendant has personal immunity under Ohio Rev. Code § 9.86. Ohio Rev. Code § 2743.02(F). A suit against the official can go forward in the common pleas court only if the Court of Claims determines that the official does not have personal immunity under § 9.86.

In *Conley*, the Ohio Supreme Court was confronted with a dispute under the personal immunity provision, § 9.86, and subsection (F) of the OCCA—not subsection (A)(1). 595 N.E.2d at 864. A common pleas court had dismissed Conley's suit against an Ohio law enforcement official because Conley failed to follow § 2743.02(F)'s dictate and file

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[2] Subsection (F) provides in relevant part:

> A civil action against an officer or employee . . . that alleges that the officer's or employee's conduct was manifestly outside the scope of the officer's or employee's employment or official responsibilities, or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims, which has exclusive, original jurisdiction to determine, initially, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action.

Ohio Rev. Code § 2743.02(F).

first in the Court of Claims. 595 N.E.2d at 862. The Ohio Supreme Court held that the common pleas court's dismissal of the state law claims was proper. *Id.* at 868-69. The *Conley* court then held, however, that the common pleas court erred in dismissing Conley's federal § 1983 claim. *Id.* at 870. The court explained that § 2743.02(F) and the personal immunity provision, § 9.86, "do not apply to claims brought under federal law" because the personal immunity provision "expressly limits its coverage to 'any civil action that arises under *the law of this state*.'" *Id.* at 869 (quoting Ohio Rev. Code § 9.86).

*Conley* stands for the proposition, then, that the procedural requirements of § 2743.02(F) do not apply to § 1983 claims. And for good reason: Section 2743.02(F)'s procedural mechanism is about allowing the Court of Claims to make the initial determination of immunity under § 9.86. When the claim arises under federal law, however, there is no immunity determination to make, because § 9.86 guards state officials from liability only under *state* law. Section 2743.02(F)'s procedural mechanism is thus irrelevant to federal law claims.

*Conley*'s holding concerning the procedural requirement of § 2743.02(F) therefore has no bearing on the proper interpretation of the OCCA waiver provision, § 2743.02(A)(1), for the simple reason that these two provisions are distinct, and the Ohio Supreme Court considered only subsection (F), not subsection (A)(1). The Sixth Circuit has explained as much. See *Thomson*, 65 F.3d at 1319 ("*Conley* does not alter the calculus where a party chooses to waive certain claims in order to gain access to the state's coffers via the Court of Claims. . . ."). In other words,

a plaintiff *may*, consistent with § 2743.02(F) and *Conley*, sue a state official under § 1983 in common pleas court (or, for that matter, in federal court). Once he does so, however, the waiver provision, § 2743.02(A)(1), dictates that he gives up the right to pursue the State's deep pockets in a separate action.

To the extent Wrinn's objection is that the Ohio Supreme Court, not the Sixth Circuit, should distinguish *Conley*, the fault lies with him. The Sixth Circuit attempted to certify the question to the Ohio Supreme Court, App. 9a-10a, but the Ohio Supreme Court dismissed the certified question because of Wrinn's lack of prosecution, App. 45a.

Accordingly, consistent with the Sixth Circuit's proper interpretation of the OCCA waiver provision, the interaction of *Leaman* and *Conley* does not raise any legitimate federalism concerns.

## CONCLUSION

For the foregoing reasons, Wrinn's petition for writ of certiorari should be denied.

Respectfully submitted,

RICHARD CORDRAY
Attorney General of Ohio

BENJAMIN C. MIZER*
Solicitor General
**Counsel of Record*
ELISABETH A. LONG
Deputy Solicitor
30 E. Broad St., 17th Floor
Columbus, Ohio 43215
614-466-8980
benjamin.mizer@
ohioattorneygeneral.gov

Counsel for Respondents

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